

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS – COMMERCIAL DIVISION**

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**STAR AUTO SALES OF QUEENS LLC
D/B/A STAR SUBARU;**

Index No.: 717443/2017

Plaintiff,

**DOUGLAS FILARDO and
SUBARU MOTORSPORTS D/B/A
MOTORSPORTS ADVERTISING,**

**SHORT FORM ORDER
DATED MARCH 15, 2021
WITH NOTICE OF ENTRY**

Defendants.

Motion Seq. No. 007

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PLEASE TAKE NOTICE that within is a true and correct copy of the Short Form Order dated March 15, 2021 and duly entered in the Office of the Clerk of the within named Court on or about March 16, 2021.

Dated: Lake Success, New York
March 16, 2021



Jamie S. Felsen, Esq.
MILMAN LABUDA LAW GROUP PLLC
Attorneys for Plaintiff
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Tel. (516) 328-8899
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TO: Douglas Filardo
c/o Subaru Motorsports
27 Montauk Hwy
West Hampton, NY 11977
dfilardo@ymail.com

Subaru Motorsports d/b/a Motorsports Advertising
27 Montauk Hwy
West Hampton, NY 11977

Short Form Order

FILED

NEW YORK SUPREME COURT - QUEENS COUNTY

3/16/2021
12:46 PM

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

IAS PART 4

COUNTY CLERK
QUEENS COUNTY

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STAR AUTO SALES OF QUEENS LLC
D/B/A STAR SUBARU,

Index
No.: 717443/2017

Plaintiff(s),

Motion
Dated: December 8, 2020

-against-

Motion
Cal. No.:

DOUGLAS FILARDO AND SUBARU
MOTORSPORTS D/B/A MOTORSPORTS
ADVERTISING,

Motion
Seq. No.: 7

Defendant(s).
-----X

The following papers numbered E163, E165-176 and E180 on this motion by defendant Douglas Filardo for an Order staying this matter for a period of sixty (60) days to allow him to obtain new counsel, and on the cross-motion by plaintiff for an Order striking defendants' answer pursuant to CPLR §3126 based upon Douglas Filardo's failure to appear for a deposition.

PAPERS
NUMBERED
Notice of Motion Affid.-Exhibits..... E 163
Notice of Cross-Motion Affid.-Exhibits..... E165- E176,180

Upon the foregoing papers, it is ordered that this motion is denied without prejudice, and the cross-motion is granted as set forth herein.

The application of defendant Douglas Filardo (Filardo) entitled "Notice of Motion for a 60 Day Stay" is unsigned, as is required by Uniform Court Rule 130-1.1 (a), and does not comply with the Notice of Motion requirements of CPLR §2214. Accordingly, the application must be denied outright. Moreover, the attempt by defendant Filardo to discharge his attorney of record does not comply with CPLR §321(b)(1) in that it is not signed by the outgoing attorney.

Plaintiff opposes Filardo's motion and cross-moves for an Order striking defendants' answer based upon the failure of Filardo, the sole proprietor of defendant Subaru Motorsports

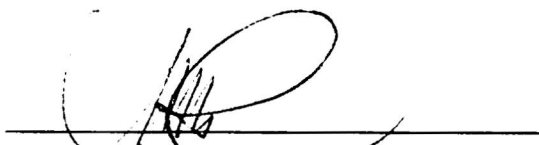
d/b/a Motorsports Advertising, to appear for a deposition. Pursuant to the Preliminary Conference Order of July 19, 2019, Filardo was to appear for deposition on August 18, 2019. The deposition did not take place, and pursuant to a Compliance Conference Order filed October 28, 2019, Filardo was to appear for deposition on December 19, 2019. The deposition again did not take place, and on January 24, 2020, defendants brought a motion seeking to stay discovery on other grounds. The motion was denied on May 11, 2020. Thereafter, the parties entered into a Stipulation on July 23, 2020, wherein it was agreed that Filardo would appear for deposition on October 6, 2020. However, prior to the scheduled deposition, Mr. Filardo purportedly discharged his counsel, albeit improperly, and, despite the specific direction of the Court to proceed, Mr. Filardo failed to appear for the deposition.

Plaintiff maintains that the foregoing events demonstrate willful and contumacious behavior on the part of Filardo, warranting an Order striking the answer of the defendants. The nature and degree of a penalty to be imposed pursuant to CPLR §3126 rests within the sound discretion of the court (*Sparakis v Gozzer Corp.*, 177 AD3d 1011 [2019]). While actions should be resolved on the merits wherever possible, the striking of a pleading may be an appropriate sanction where the failure to comply with discovery demands is found to be willful and contumacious (*Flynn v City of New York*, 101 AD3d 803 [2012]; *Sparakis v Gozzer Corp.*, *supra*). Here, Filardo's willful and contumacious conduct can be inferred from his repeated failures, for a period of well over a year, to appear for his deposition despite court Orders and a stipulation to do so and the express direction of the Court (*Sparakis v Gozzer Corp.*, *supra*; *Espinal v New York City Health and Hospitals Corp.*, 115 AD3d 641 [2014]; *Flynn v City of New York*, *supra*).

Accordingly, defendants' motion is denied. Plaintiff's cross-motion is granted to the extent that the Answer of defendants Douglas Filardo and Subaru Motorsports d/b/a Motorsports Advertising is hereby stricken.

Dated:

3/15/21



MARGUERITE A. GRAYS

J.S.C.

FILED

3/16/2021
12:45 PM

COUNTY CLERK
QUEENS COUNTY